

EXHIBIT “2”

1 REBECCA EISEN, State Bar No. 096129
THERESA MAK, State Bar No. 211435
2 M. MICHAEL COLE, State Bar No. 235538
MORGAN, LEWIS & BOCKIUS, LLP
3 One Market, Spear Street Tower
San Francisco, CA 94105-1126
4 Tel: 415.442.1000
Fax: 415.442.1001
5 reisen@morganlewis.com
tmak@morganlewis.com
6 mcole@morganlewis.com

7 DARYL S. LANDY, State Bar No. 136288
MORGAN, LEWIS & BOCKIUS LLP
8 2 Palo Alto Square
3000 El Camino Real, Suite 700
9 Palo Alto, CA 94306-2212
Tel: 650.843.4000
10 Fax: 650.843.4001
dlandy@morganlewis.com

11 Attorneys for Defendants
12 CBS RADIO INC. (formerly known as "Infinity
Broadcasting Corporation"), CBS CORPORATION,
13 INFINITY BROADCASTING CORPORATION
(erroneously sued as "Infinity Broadcasting Inc."),
14 and VIACOM INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 TERRY SAIDEL and GINA FONG,
19 individually and on behalf of all others
similarly situated,

20 Plaintiff,

21 v.

22 CBS RADIO, INC., a Delaware
corporation; CBS CORPORATION,
23 a Delaware corporation; INFINITY
BROADCASTING, INC., a Delaware
24 corporation; VIACOM, INC., a Delaware
Corporation; and DOES 1 through 10,
25 inclusive,

26 Defendant.
27

Case No. C 07-02948 SC

**CBS RADIO INC.'S RESPONSE TO
PLAINTIFF'S FIRST AMENDED SET OF
SPECIAL INTERROGATORIES**

1 PROPOUNDING PARTY: Plaintiff TERRY SAIDEL ("Plaintiff")
2 RESPONDING PARTY: Defendant CBS RADIO INC. ("Defendant")
3 SET NUMBER: ONE (1)

4 **GENERAL OBJECTIONS**

5 In addition to specific objections set forth below, Defendant asserts the following General
6 Objections:

7 1. Defendant objects to Plaintiff's Special Interrogatories to the extent that they seek
8 information protected from disclosure by the attorney-client privilege and/or the attorney work
9 product doctrine.

10 2. Defendant objects to each Special Interrogatory to the extent that it seeks
11 information that cannot be disclosed without violating the right to privacy of Defendant, its
12 agents, and/or employees, and/or any other person or entity that is otherwise privileged or
13 immune from discovery.

14 3. Defendant objects to each Special Interrogatory to the extent that it calls for
15 disclosure of confidential information, including, but not limited to, commercial, financial, or
16 other trade secret information.

17 4. Defendant objects to these Special Interrogatories to the extent that they seek
18 information for a time period that is overly broad and/or encompasses dates irrelevant to this
19 action, until such time as Plaintiff or other party demonstrates the relevance of the specified time
20 period.

21 5. Defendant's Responses to these Special Interrogatories are not admissions that
22 such information is relevant or admissible evidence. Defendant reserves the right to object to the
23 admission of such information on any grounds at time of trial.

24 6. Defendant objects to these Special Interrogatories to the extent that they attempt to
25 impose response obligations beyond those imposed by law.

26 7. Defendant objects to these Special Interrogatories to the extent that they seek
27 information regarding Gina Fong who is no longer a named Plaintiff in this matter.

28 8. Defendant objects to these Special Interrogatories to the extent that they seek

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individual information about all purported class members, on the ground that individual discovery in a class action is inappropriate and unduly burdensome.

Subject to, and without waiving, any of the foregoing objections, Defendant responds as follows:

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

IDENTIFY ALL INDIVIDUALS who are currently employed as a **ACCOUNT EXECUTIVES** by **CBS** in California.

RESPONSE TO INTERROGATORY NO. 1:

Defendant objects to this interrogatory on the grounds that it is overbroad, irrelevant and premature, as no class has been certified. Defendant also objects to this interrogatory to the extent it seeks private and confidential information. Subject to and without waiving these objections, Defendant responds as follows: 233 individuals are currently employed in California by CBS Radio Inc. as Account Executives.

INTERROGATORY NO. 2:

IDENTIFY ALL INDIVIDUALS who have served as a **ACCOUNT EXECUTIVES** for **CBS** in California during the COVERED PERIOD but who are no longer employed in that position by **CBS**.

RESPONSE TO INTERROGATORY NO. 2:

Defendant objects to this interrogatory on the grounds that it is overbroad, irrelevant, and premature, as no class has been certified. Defendant also objects to this interrogatory to the extent it seeks private and confidential information. Subject to and without waiving these objections, Defendant responds as follows: 602 individuals were employed in California by CBS Radio Inc. as Account Executives during the COVERED PERIOD, but those 602 individuals are no longer so employed. [It's confusing to say that they were employed between May 3, 2003 and the **present** but are no longer employed.]

INTERROGATORY NO. 3:

IDENTIFY ALL INDIVIDUALS who are currently employed by **CBS** and who served as

1 immediate supervisors of **ACCOUNT EXECUTIVES** in California during the COVERED
2 PERIOD.

3 **RESPONSE TO INTERROGATORY NO. 3:**

4 Defendant objects to this interrogatory on the grounds that it is overbroad, irrelevant and
5 premature, as no class has been certified. Defendant also objects to this interrogatory to the
6 extent it seeks private and confidential information. Subject to and without waiving these
7 objections, Defendant responds as follows: Steven Sullivan served as an immediate supervisor of
8 Terry Saidel between May 3, 2003 and the date of Mr. Saidel's departure from the company in
9 August 2006.

10 **INTERROGATORY NO. 4:**

11 IDENTIFY ALL INDIVIDUALS who are no longer employed by CBS but who served as
12 immediate supervisors of **ACCOUNT EXECUTIVES** in California during the COVERED
13 PERIOD.

14 **RESPONSE TO INTERROGATORY NO. 4:**

15 Defendant objects to this interrogatory on the grounds that it is irrelevant, overbroad and
16 premature, as no class has been certified. In addition, Defendant objects to this interrogatory to
17 the extent that it seeks private and confidential information. Subject to and without waiving these
18 objections, Defendant responds as follows: Michael Masterson served as an immediate supervisor
19 of Terry Saidel between May 3, 2003 and the date of Mr. Saidel's departure from the company in
20 August 2006.

21 **INTERROGATORY NO. 5:**

22 For each of CBS's responses to Request for Admissions, Set One, that is not an
23 unconditional admission, state the number of the Request and all facts upon which CBS bases its
24 response to that request.

25 **RESPONSE TO INTERROGATORY NO. 5:**

26 Defendant objects to this interrogatory on the grounds that it is overbroad, unduly
27 burdensome and oppressive because it requests Defendant to specify all facts that support the
28 denial of a statement. *Safeco of America v. Rawstron*, 181 F.R.D. 441, 447 (C.D. Cal. 1998).

1 Defendant further objects on the grounds that Plaintiff has exceeded the twenty-five (25)
 2 interrogatory limit contained in Rule 33a of the Federal Rules of Civil Procedure because each of
 3 Plaintiff's First Amended Requests for Admission as to which a response would be required
 4 constitutes a separately countable subpart. *Id.* at 446-447. Defendant further objects to this
 5 interrogatory on the grounds that it is overbroad, premature and calls for the production of
 6 irrelevant information, as no class has been certified.

7 **INTERROGATORY NO. 6:**

8 For each of CBS's responses to Request for Admissions, Set One, that is not an
 9 unconditional admission, state the number of the Request and IDENTIFY ALL INDIVIDUALS
 10 who have knowledge of the facts upon which CBS bases its response to that request.

11 **RESPONSE TO INTERROGATORY NO. 6:**

12 Defendant objects to this interrogatory on the grounds that it is overbroad, unduly
 13 burdensome and oppressive because it requests Defendant to specify all facts that support the
 14 denial of a statement. *Safeco of America v. Rawstron*, 181 F.R.D. 441, 447 (C.D. Cal. 1998).
 15 Defendant further objects on the grounds that Plaintiff has exceeded the twenty-five (25)
 16 interrogatory limit contained in Rule 33a of the Federal Rules of Civil Procedure because each of
 17 Plaintiff's First Amended Requests for Admission as to which a response would be required
 18 constitutes a separately countable subpart. *Id.* at 446-447. Defendant further objects to this
 19 interrogatory on the grounds that it is overbroad and premature and calls for the production of
 20 irrelevant information, as no class has been certified.

21 **INTERROGATORY NO. 7:**

22 For each of CBS's responses to Request for Admissions, Set One, that is not an
 23 unconditional admission, state the number of the Request and IDENTIFY ALL DOCUMENTS
 24 that form the bases for the facts upon which CBS bases its response to that request.

25 **RESPONSE TO INTERROGATORY NO. 7:**

26 Defendant objects to this interrogatory on the grounds that it is overbroad, unduly
 27 burdensome and oppressive because it requests Defendant to specify all facts that support the
 28 denial of a statement. *Safeco of America v. Rawstron*, 181 F.R.D. 441, 447 (C.D. Cal. 1998).
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1 Defendant further objects that Plaintiff has exceeded the twenty-five (25) interrogatory limit
2 contained in Rule 33a of the Federal Rules of Civil Procedure because each of Plaintiff's First
3 Amended Requests for Admission as to which a response would be required constitutes a
4 separately countable subpart. *Id.* at 446-447. Defendant further objects to this interrogatory on
5 the grounds that it is overbroad and premature and calls for the production of irrelevant
6 information, as no class has been certified.

7
8 Dated: October 24, 2007

MORGAN, LEWIS & BOCKIUS LLP
REBECCA EISEN
THERESA MAK

9
10
11 By 

12 Theresa Mak

13 Attorneys for Defendants
14 CBS RADIO INC. (formerly known as
15 "Infinity Broadcasting Corporation"),
16 CBS CORPORATION, INFINITY
17 BROADCASTING CORPORATION
18 (erroneously sued as "Infinity Broadcasting
19 Inc."), and VIACOM INC.

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VERIFICATION TO FOLLOW

PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is One Market, Spear Street Tower, San Francisco, California 94105-1126.

On October 24, 2007, I served the within document(s):

CBS RADIO INC.'S RESPONSE TO PLAINTIFF'S FIRST AMENDED SPECIAL INTERROGATORIES

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. AND/OR
- ☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- ☐ by causing the document(s) listed above to be personally delivered to the person(s) at the address(es) as set forth below.
- ☐ by transmitting via electronic mail the document(s) listed above to each of the person(s) as set forth below.

Morris J. Baller
GOLDSTEIN, DEMCHAK, BALLER, BORGEN &
DARDARIAN
300 Lakeside Drive, Suite 1000
Oakland CA 94612
Tel: 510-763-9800
Fax: 510-835-1417

Aaron Kaufmann
David P. Pogrel
HINTON, ALFERT & SUMNER
1646 California Blvd., Suite 600
Walnut Creek CA 94596
Tel: 925-932-6006
Fax: 925-932-3412

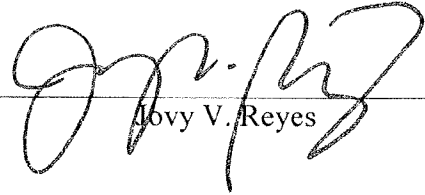
Michael Singer
Christopher Olsen
COHELAN & KHOURY
605 "C" Street, Suite 200
San Diego CA 92101
Tel: 619-595-3001
Fax: 619-595-3000

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on

1 motion of the party served, service is presumed invalid if postal cancellation date or postage
2 meter date is more than one day after date of deposit for mailing in affidavit.

3 Executed on October 24, 2007, at San Francisco, California.

4 I declare under penalty of perjury, under the laws of the State of California, that the above
5 is true and correct.

6 
7 Jovy V. Reyes

**DECLARATION OF DAVID POGREL IN SUPPORT OF PLAINTIFFS' MOTION TO
COMPEL FURTHER RESPONSES TO PLAINTIFFS FIRST AMENDED SPECIAL
INTERROGATORIES, SET ONE**

I, David Pogrel, declare as follows:

1. I am a member in good standing of the Bar of the State of California and an associate at the law firm of Hinton, Alfert & Sumner, in Walnut Creek, California, counsel for Plaintiff in this action. I have personal knowledge of the facts set forth in this declaration and could and would testify competently to them.

2. My office served Defendant CBS Radio, Inc. ("CBS") the Plaintiffs' First Amended Special Interrogatories, Set One, by mail on August 22, 2007. A true and correct copy of the Plaintiffs' First Amended Special Interrogatories, Set One ("Interrogatories") is attached hereto as Exhibit 1.

3. After Plaintiffs granted an extension, CBS served its Responses to Plaintiffs' First Amended Special Interrogatories, Set One ("Responses") on October 24, 2007. A true and correct copy of the Responses is attached hereto as Exhibit 2. CBS objected to and failed to provide any answers to special interrogatories numbers 1-4, which requested the names and contact information of putative class members and supervisors, on the grounds of privacy, over breadth, irrelevancy, and prematurity because no class has been certified.

4. On November 7, 2007, I wrote a letter to CBS's counsel, Rebecca Eisen and Theresa Mak, to confer regarding CBS's failure to answer special interrogatories numbers 1-4. A true and correct copy of that letter is attached hereto as Exhibit 3. At the end of the letter, I offered a limited-time compromise under which Plaintiffs would agree to an opt-out privacy notice be sent to the putative class members and supervisors provided that the parties could agree on language of the notice by November 19, 2007 and that CBS could provide the putative class members' and supervisors' contact information to a third-party administrator no later than November 26, 2007.

1 5. I participated in a telephone conference call with Ms. Mak and Ms. Eisen on
2 November 8, 2007 at which time Ms. Eisen reiterated that, in her opinion, Plaintiffs were not
3 entitled to the contact information requested in special interrogatories 1-4 unless and until a class is
4 certified in this action. Ms. Eisen conceded that she had not read my letter of November 7, 2007
5 and would not confirm whether or not the parties had reached an impasse on the issue until given
6 the opportunity to further consider her position.

7 6. On November 19, 2007, I received a letter from Ms. Mak, associate and counsel for
8 CBS, informing us that CBS would not provide any of the contact information requested in special
9 interrogatories 1-4. A true and correct copy of that letter is attached hereto as Exhibit 4.

10 7. On November 20, 2007, I send a letter by facsimile and first class mail to Ms. Eisen
11 and Ms. Mak regarding several outstanding discovery matters. In this letter, I reiterated that
12 Plaintiffs are entitled to the contact information sought in special interrogatories 1-4 and that the
13 arguments presented by Ms. Mak in her November 19, 2007 letter are not controlling. I informed
14 Ms. Eisen and Ms. Mak that we would move to compel unless CBS changed its position on the
15 requested contact information.

16 8. On November 20, 2007, after sending the above-referenced letter by facsimile, I
17 received a phone call from Ms. Eisen and Ms. Mak. During the call, Ms. Eisen offered a
18 compromise which she said that she hoped would avoid the imminent filing of discovery motions.
19 With respect to putative class member contact information, she informed me that CBS may be
20 willing to provide a limited sample of class contact information. While we did not agree on a
21 sample size, she suggested that CBS might be willing to provide the contact information for 50
22 putative class members. I asked her the approximate total number of putative class members in
23 order to determine the total percentage of the class represented by 50 class members, at which time
24 she informed me she estimated the class at approximately 250 people. I told her I would confer
25 with my co-counsel on her proposal and send a response to her.

26 9. In our November 20th telephone call, we agreed that neither party would in any way
27 waive its right to file a motion to compel on any discovery issues by agreeing to a compromise, but
28 that we would agree to delay the filing of any discovery motions for a short time period as we

1 focused the case on scheduling and taking several depositions that were noticed for the 2007
2 holiday period. Following our phone call, I sent an e-mail to Ms. Eisen and Ms. Mak to confirm
3 our discussion and offer a specific proposal under which CBS would provide contact information
4 for one-third of all putative class members and one-half of former CBS supervisors. In my e-mail,
5 we agreed that we would not file a motion to compel disclosure of any contact information before
6 December 20, 2007 if we were able to reach a compromise. A true and correct copy of my
7 November 20, 2007 e-mail is attached hereto as Exhibit 5.

8 10. On November 27, 2007, I received a phone call from Ms. Mak. In the call, Ms.
9 Mak informed me that CBS was standing by its objections with respect to special interrogatories
10 numbers 3-4 and that it would not provide the names or contact information for any current or
11 former supervisors of putative class members.

12 11. On November 27, 2007, following up on our conversation, I sent an e-mail to Ms.
13 Mak informing her that Plaintiffs would file a motion to compel the contact information of current
14 and former supervisors of the putative class unless CBS changed its position and agreed to provide
15 such information. In this same e-mail, I informed Ms. Mak that Plaintiffs would accept a sample of
16 contact information for 50 putative class members. I further informed Ms. Mak that Plaintiffs
17 would not waive our right to file a motion to compel full production of all putative class member
18 contact information, but that we would delay filing that motion for a "few weeks" following my
19 November 27, 2007 e-mail.

20 12. On January 22, 2008, CBS produced contact information for a sample of 50 putative
21 class members, informing us that CBS did not have phone numbers for 7 of the 50 that people
22 Plaintiffs has selected for sampling. Over the following three days, I worked with Ms. Mak to
23 substitute acceptable class members for whom CBs had retained complete contact information.

24 13. On January 30, 2008, I send a letter by facsimile and mail to Ms. Eisen and Ms.
25 Mak reiterating to them that Plaintiffs maintain that we are entitled to full production of all items
26 described in special interrogatories number 1-4 and that we would file a motion to compel if CBS
27 did not produce the requested information by February 5, 2007. I assured Ms. Mak and Ms. Eisen
28 that Plaintiffs will withdraw any such motion if we reach a settlement at the mediation on this

1 matter currently scheduled for March 12, 2008, but that we would feel compelled to get the motion
2 filed so that it can be heard and decided by the court shortly after mediation in the event mediation
3 is not successful and we do not reach a settlement on March 12th. A true and correct copy of my
4 January 30, 2008 facsimile/letter is attached hereto as Exhibit [REDACTED].

5 14. On February 6, 2006, I discussed the issue further with Ms. Mak and proposed a
6 compromise to avoid this motion to compel. Under my proposal, CBS would agree to provide the
7 requested information to plaintiffs two days after the March 12, 2008 mediation in the event that
8 we do not reach a settlement. In exchange, plaintiffs would agree to provide other disputed
9 discovery which we believe is protected by our client's right to privacy. I followed up our
10 conversation with an e-mail detailing my compromise proposal, and asking for a response by
11 Friday February 8, 2008. A true and correct copy of my February 6, 2008 e-mail is attached hereto
12 as Exhibit [REDACTED].

13 15. At approximately 2pm in Friday February 8, 2008, Ms. Mak sent me an e-mail in
14 which she did not give a response to my proposal, but instead raised the issue of relevance and
15 asked me to justify why the names of the class members and their supervisors are relevant at the
16 pre-certification stage of this action. I immediately responded to her e-mail with a description of
17 why the contact information is relevant and discoverable, but also informing her that plaintiffs
18 needed an answer to our proposal, not a continued dialogue on newly raised meet and confer
19 issues. Given the lack of time to negotiate or discuss the matter further, I asked Ms. Mak to
20 provide a "yes" or "no" response to my proposal by Monday February 11, 2008. A true and correct
21 copy of this February 8, 2008 e-mail exchange is attached hereto as Exhibit ____.

22 16. On February 12, 2008, Ms. Mak called to inform me that her client had not made a
23 decision on our compromise proposal on class member contact information, but that she expected
24 to talk with her client within a day or two. I agreed to provide her with two more days to respond
25 to my proposal, informing her that plaintiffs would file our motion to compel if CBS did not agree
26 to our compromise by February 14, 2008.

27 17. On February 14, 2008, Ms. Mak sent me an e-mail reaffirming that CBS declined to
28 accept my compromise proposal and would not produce any of the requested contact information

1 and that Plaintiffs would need to file a motion to compel to resolve our dispute. A true and correct
2 copy of this e-mail is attached hereto as Exhibit ____.

3 18. Attached hereto as Exhibit 1 is a true and correct copy of the Declaration of Michael
4 Masterson, dated _____.

5 19. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of
6 _____, dated _____.

7 I declare under penalty of perjury under the laws of the State of California and of the
8 United States that the foregoing is true and correct, and that this Declaration was executed this
9 ____ day of February, 2008, in Walnut Creek, California.

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12 _____
13 DAVID POGREL
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